



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
ASHLAND RESOURCE AREA
3040 Biddle Road
Medford, Oregon 97504



RIGHT-OF-WAY REQUEST OR 52915

DECISION RECORD

and

FINDING OF NO ADDITIONAL SIGNIFICANT IMPACT (FONASI)

INTRODUCTION

This Decision Record documents my decision and rationale for the selection of a course of action to be implemented for the Right-Of-Way Request OR 52915 project. The Environmental Assessment (EA) for Right-Of-Way Request OR 52915 documents the environmental analysis conducted to estimate the site-specific effects on the human environment that may result from the implementation of the project. The Right-Of-Way Request OR 52915 EA was issued for public review on July 2, 2008; the public review period ended on July 18, 2008. No comments were received.

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) received an application requesting a right-of-way for the construction of approximately 100 feet of driveway on Public Land in the Hukill Hollow area in the Sterling Creek Watershed. The applicant requested this right-of-way to obtain legal ingress and egress to private land. The application is being processed in accordance with the Federal Land Policy and Management Act (FLPMA) regulations. . The private land is described as tax lot 1600, in Section 6, T. 39 S., R. 2 W., W. M. It is BLM policy is to cooperate with private land owners in providing for legal access when other reasonable access is not obtainable.

THE DECISION

It is my decision to authorize the implementation of the proposed action as described under Alternative 2, the Proposed Action, in the Right-Of-Way Request OR 52915 EA. BLM will authorize the issuance of a long term (30 years) FLPMA right-of-way grant (about 100 feet in length) to the applicant. The new access road would be about 15 feet in width, the right-of-way ingress and egress easement would be 20 feet wide. The following project design features would be required as a condition of constructing/reconstructing and using the new road on BLM administered land.

Project Design Features

- (1) Driveway construction would be allowed to occur between June 15 to October 15.
- (2) The driveway will be surfaced for all weather use; six to eight inches of pit run or ¾ minus rock.
- (3) The applicant would be required to protect all trees along the edge of the road right-of-way during construction activities. Trees determined to be a safety hazard to workers would be removed in accordance with Occupational Safety and Health Administration regulations (none have been identified at this time).
- (4) Mechanical equipment (e.g. graders, loaders, etc.) would be power washed and cleaned of all soil and vegetative material before entering the project area.
- (5) Seeding of native grasses and/or an approved seed mix on highly disturbed soil (e.g., landings, new road cut and fill slopes, etc.), if any, would occur.

RATIONALE FOR THE DECISION

Based on the analysis documented in the EA, the anticipated effects of the construction of about 100 feet of driveway to access private land will be contained to the immediate vicinity of the project site through the implementation of required project design features. My decision to authorize Right-of-Way Request OR 52915 provides for reasonable access to private land with an acceptable level of environmental effects. Based on my review of the EA for Right-of-Way Request OR 52915, the 1995 Medford District Resource Management Plan, and 43 Code of Federal Regulations Subpart 2800 (Rights-of-Way Grants Under the Federal Land Policy Management Act), and my knowledge of applicable laws and policies, I have also determined the implementation of this project is compliant with applicable Federal and State laws and consistent with management direction for BLM-administered lands.

PLAN COMPLIANCE

The above proposed Project is designed to conform with and is tiered to the *Medford District Record of Decision and Resource Management Plan (RMP)*, as amended by the *Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from the Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* (USDI 2007). The 1995 Medford District Resource Management Plan incorporated the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* (Northwest Forest Plan) (USDA and USDI 1994).

The proposed action and alternatives are in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979.

FINDING OF NO ADDITIONAL SIGNIFICANT IMPACT (FONASI)

I have considered both context and intensity of the impacts anticipated from implementing the Right-Of-Way Request OR 52915 project relative to each of the ten significance criteria suggested by the CEQ. I have determined that my decision to implement the proposed action as described in this Decision will not have any additional significant adverse effects beyond those effects described in broader analyses which includes the *1994 Medford District Proposed Resource Management Plan/Environmental Impact Statement*, *1994 Final SEIS On Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl*, and the *2007 Final Supplemental Environmental Impact Statement For Amendment to the Survey and Manage, Protection Buffer, and other*

Mitigation Measures Standards and Guideline or the effects have been determined to be insignificant. The estimated effects of the Proposed Action are described below relative to each of the ten significance criteria suggested by the CEQ with regard to the significance criteria.

1) The effects of this project on soil, vegetation, water quality, hydrologic function (water flow), and fish and wildlife habitats are within those effects described in the Medford District PRMP/EIS and/or have been determined to be insignificant.

The Environmental Assessment completed for Right-of-Way Request OR 52915 did not identify any significant effects to affected resources (EA Section H, Environmental Consequences) and based on the effects documented in the EA I have determined the effects of this project are consistent with those anticipated in the Medford District RMP/EIS and have been determined to be insignificant for this project.

2. The implementation of this project will not have significant adverse effects on public health or safety.

No aspects of the project have been identified as having the potential to significantly and adversely impact public health or safety. All operations on BLM-administered lands are required to meet Occupational Safety and Health Association regulations for worker and public safety (EA p. 7).

3. The implementation of this project will have no significant, adverse effects on unique geographic characteristics or features, or on special designation areas such as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; sole or principle drinking water aquifers; or prime farmlands.

The EA for Right-Of-Way Request OR 52915 did not identify any affects to parks, refuge lands, wilderness areas, wild or scenic rivers, principal drinking water aquifers, or prime farmlands as non exist in the project area. Nor does the project area involve any ecologically significant areas such as significant caves, Areas of Critical Environmental Concern, National Monuments, Wilderness Study Areas, Research Natural Areas, or areas listed on the National Register of Natural Landmarks as none exist in the project area. (EA Section H, Environmental Consequences).

The project will have no effect on cultural resources; a cultural resource survey was completed and no resources were found (EA p. 7).

This project would not result in restricting access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. No sites have been identified in the project area. Executive Order 13007 (Indian Sacred Sites). (EA p. 7).

This project would have no effect on Indian Trust Resources as none exist in the project area (EA p. 7).

4. This project does not involve highly controversial environmental effects (40 CFR 1508.1).

No significant or unique level of controversy concerning the effects of this project has been identified. The EA was published for public review; no comments were received (EA p. 8 and EA project record on file at the Medford District BLM).

5. The implementation of this project will not have any highly uncertain or potentially significant environmental effects or unique or unknown environmental risks.

The process for estimating the anticipated effects are well known and this project is limited in scope and intensity. The estimated environmental effects identified for this project have been determined to be within the effects described in the Medford District Proposed Resource Management Plan Environmental

Impact Statement and have also been determined to be insignificant as the project is designed to avoid or minimize the potential for adverse environmental effects (EA Section H, Environmental Consequences and EA p. 7-8).

6. My decision to implement this action will not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

Other projects of this nature are implemented on a regular basis on federal lands across the Medford District and in the vicinity of the project area. The Medford District Resource Management Plan provided program direction for rights-of-way across public lands (RMP p. 82). Therefore, this decision will not establish precedent for future projects. (EA p. 8)

7. Potential for significant cumulative environmental effects.

This project would not impact water resources, it would likewise have no effect to aquatic and fish habitat, including CCH and EFH. Aquatic Conservation Strategy objectives would be unaffected at all spatial scales. (EA p. 5).

The project area is located in an area of previous disturbance and within 125 to 150 feet of an existing road. Field visits by BLM staff verified the vicinity of the project area to be open forest condition. Access across the existing route would involve little if any new vegetation disturbance. Implementation of the road would involve disturbance to less than 0.1 acre of grass and shrub vegetation; no tree removal would occur. (EA p. 5).

The proposed action would authorize a private landowner to construct approximately 100 feet of road on BLM managed land. The new construction would remove approximately 1,500 square feet of grassland habitat. The loss of this small amount of habitat would have a negligible impact to the terrestrial wildlife species on BLM managed land in the general area of the proposed project. (EA p. 6).

However, the proposed action would facilitate the construction of additional road and a house. The use of the road and the presence of a house, along with the associated activity, would have a long-term influence on the distribution and abundance of wildlife species in the immediate vicinity of the road and house. It is likely that some wildlife species would avoid these areas and that some would habituate to the activity. It is also possible that some species would be attracted to the residence depending on the food, water and shelter that would provide by landscaping, structures, and other amenities of human habitation. (EA p. 6).

The surveys found no occurrences of Bureau SSP species within or adjacent to the proposed treatment areas. Surveys for the 20 species of fungi that are on the Medford District SSP list are not required; the project area provides no suitable habitat. (EA p. 6.)

Noxious weed spread would be avoided by project design features, including seeding on new cut areas and/or fill slopes. The right-of-way, being on flat ground, is expected to have little or no new cut or fill slopes. (EA p. 7).

8. This project will have no adverse effects on properties listed or eligible for listing on the National Register of Historic Places. This includes Native American religious or cultural sites, archaeological sites, or historic properties.

The project will have no effect on cultural resources; a cultural resource survey was completed and no resources were found.

This project would not result in restricting access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. No sites have been identified in the project area. Executive Order 13007 (Indian Sacred Sites). (EA p. 7).

This project would have no effect on Indian Trust Resources as none exist in the project area (EA p. 7).

9. The implementation of this project will have no adverse effects on species listed or proposed to be listed as Federally Endangered or Threatened Species, or have adverse effects on designated critical habitat for these species.

There are no populations of threatened, endangered, or sensitive fish species in the vicinity of the proposed construction. (EA p. 5).

Of the four federal endangered (*Arabis macdonaldiana*, *Fritillaria gentneri*, *Limnanthes floccosa* ssp. *grandiflora*, *Lomatium cookii*) and one candidate (*Calochortus persistens*) plants on the Medford District, the Right-of-Way is within the range of only one, *Fritillaria gentneri*. No occurrences of listed or candidate plants have been found within the project area. Any sites of listed or candidate plants found outside their defined range would have been reported. (EA p. 6.)

10. Potential for implementation of this project to result in Violation of Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment, where non-Federal requirements are consistent with Federal requirements.

The Proposed Action is in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA), Safe Drinking Water Act (SDWA) of 1974 (as amended in 1986 and 1996), the Clean Water Act, and the Archaeological Resources Protection Act of 1979 (ARPA). (EA p. 2).

Project design features are included to reduce the potential for this project to contribute to the introduction, existence, or spread of: Federally listed noxious weeds (Federal Noxious Weed Control Act); or invasive non-native species; Executive Order 13112 (Invasive Species). (EA p. 3).

This project was reviewed for the potential for disproportionately high or adverse effects on minority or low income populations; no adverse impacts to minority or low income populations will occur. *Executive Order 12898 (Environmental Justice)*. (EA p. 8).

EFFECTIVE DATE OF DECISION

This is a decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2800. All BLM decisions under 43 CFR 2800 are full force and in effect when this Decision Record is signed. All decisions made under 43 CFR 2800 remain in effect pending appeal (43 CFR Subpart 2801.10).


ADMINISTRATIVE REMEDIES

Any party to a case who believes they may be adversely affected by a decision of an officer of the Bureau of Land Management has the right to appeal to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of the Interior, Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR part 4. If an appeal is taken, a notice of appeal must be filed in this office within thirty (30) days of the Notice of Decision for transmittal to the Board. If your notice of appeal does not include a statement of reasons, such statement must be filed with the Board within 30 days after the notice of appeal was filed. A copy of your notice of appeal and any statement of reasons, written arguments, or briefs, must also be served upon the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 500 N.E. Multnomah Street, Suite 607, Portland, Oregon 97232. In taking an appeal, there must be strict compliance with the regulations.

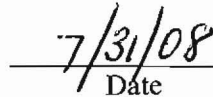
According to 43 CFR Part 4, you have the right to petition the Office of Hearings and Appeals to stay the implementation of the decision; however, you must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied,
- 2) The likelihood of the appellants success on the merits,
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

Should you choose to file, your stay request must accompany your notice of appeal. A notice of appeal with petition for stay must be served upon the Board, Regional Solicitor, and adverse party at the same time such documents are served on the deciding official at this office.



John Gerritsma
Field Manager, Ashland Resource Area
Medford District, Bureau of Land Management



Date

References

USDA Forest Service and USDI Bureau of Land Management. 1994. *Final SEIS On Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan)*. Regional Ecosystem Office, Portland, OR.

U.S. Department of Agriculture, Forest Service and U.S. Department of the Interior, Bureau of Land Management. 1994. *Record of Decision (ROD) for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl*. Portland, OR.

United States Department of the Interior (USDI) Bureau of Land Management. October 1994. *Medford District Proposed Resource Management Plan/ Environmental Impact Statement*.

United States Department of the Interior (USDI) Bureau of Land Management. June 1995. *Medford District Record of Decision and Resource Management Plan*.

USDI, Forest Service and U.S. Department of the Interior, Bureau of Land Management. 2001. *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines*. Portland, OR.